

REMARKS

In an office action dated 17 November 2004, the Examiner rejects 1- 59 (all pending claims). In response to the office action, Applicants amend claims 1, 6-11, 13, 22-29, 31 37-40, 42, 43, 45, 47, 50-53 and 55-59. Applicants also cancel claims 5, 30, and 36. Applicants further traverse the rejections. Claims 1-4, 6-29, 31-35, and 37-59 remain in the Application. In light of the amendments and the following arguments, Applicants respectfully request that the Examiner allow the pending claims and the Application.

In the office action, the Examiner rejects claims 10, 15, 41, and 46 under 35 U.S.C. §112 as being indefinite as it is unclear of the meaning of a music transcription system. However, the claim and the specification clearly recite that the musical transcription system generates a musical score. Musical transcription systems are known in the art. One need only do an Internet search of music transcription system to see that these systems are common in the art. Therefore, Applicants respectfully request that these rejections be removed.

The Examiner also rejects claims 22, 23, 25, 27, 30, 41, 46, 50, and 56-58 under 35 U.S.C. §112 for use of the term approximately real time. Applicants have amended these claims to state that the action performed in real time are done responsive to an action to add definiteness to the timing of the steps. For this reason, Applicants respectfully request that the rejections be removed.

The Examiner rejects claim 1 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 5,918,223 issued to Blum. To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v.*

Barient, Inc., 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The **test for anticipation** is symmetrical to the test for infringement and has been stated as: “That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983). The Examiner has not provided a reference that teaches each and every element of the claims.

Claim 1 recites at least one analysis module that generates a representation of a received unknown work and transmits the representation to at least one identification server that uses the representation to identify the work. Blum does not teach an analysis module that transmits the representation over the network to an identification server. Instead, Blum teaches a process that receives an acoustical file, generates a vector from psychoacoustical features, and may compare the vector to vectors of known works to identify the file. There is no mention of separate modules performing the generation of vector and the comparison. Instead this is done by one processing system as disclosed in Figure 1. Thus, there is no mention of the transmission of the vector from one module to a server over a network. For this reason, Blum does not teach amended claim 1. Thus, Applicants respectfully request the rejection of claim 1 be removed and amended claim 1 be allowed.

Claims 2-4 and 6-29 are dependent upon amended claim 1. Thus, claims 2-4 and 6-29 are allowable for at least the same reasons as claim 1. Therefore, Applicants

respectfully request that the rejections of claims 2-4 and 6-29 be removed and claims 2-4 and 6-29 be allowed.

Claim 31 recites a method performed by an analysis module including the step of sending the representation to an identification server over a network. Thus, claim 31 is allowable for at least the same reason as claim 1 as it includes the step of sending over a network that is not disclosed in Blum. Therefore, applicants request the rejection of claims 31 be removed and amended claim 31 be allowed.

Claims 32-35 and 37-50 are dependent upon amended claim 31. Thus, claims 32-35 and 37-50 are allowable for at least the same reasons as claim 1. Therefore, Applicants respectfully request that the rejections of claims 32-35 and 37-50 be removed and claims 32-35 and 37-50 be allowed.

Amended claim 51 recites a method for determining an identity of a work from a representation received over a network. Thus, claim 51 is not taught by Blum as the representation of the work is not received over the network in Blum. Therefore, claim 51 is allowable for the same reasons as amended claim 1. Thus, Applicants respectfully request that the rejection of claim 51 be removed and amended claim 51 be allowed.


Amended claim 52 recites an apparatus for receiving data for a work, generating a representation, and transmitting the representation over a network. Blum does not teach this representation as Blum does not having separate components connected by a network. Thus, amended claim 52 is allowable over Blum for at least the same reasons as amended claim 1. Therefore, Applicants respectfully request that the rejection of claim 52 be removed and amended claim 52 be allowed.

Claims 53-58 are dependent upon amended claim 52. Thus, claims 53-58 are allowable for at least the same reasons as amended claim 52. Therefore, Applicants respectfully request that the rejections of claims 53-58 be removed and claims 53-58 be allowed.

Amended claim 59 recites an apparatus that performs the method of claim 51. Thus, claim 59 is allowable for at least the same reasons as amended claim 51. Therefore, Applicants respectfully request that the rejection of claim 59 be removed and claim 59 be allowed.

If the Examiner has any questions regarding this response or the application in general, the Examiner is invited to contact the undersigned at 775-586-9500.

Respectfully submitted,
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